

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 338

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO CONTROLLED SUBSTANCES; ENACTING THE CLANDESTINE
DRUG LABORATORY ACT; PROVIDING FOR NOTICE, A CLANDESTINE DRUG
LABORATORY LIST, REMEDIATION, LOANS AND RESTITUTION; IMPOSING
PENALTIES; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Clandestine Drug Laboratory Act".

Section 2. DEFINITIONS.--As used in the Clandestine Drug
Laboratory Act:

A. "clandestine drug laboratory" means a site,
including personal and real property, structures, mobile homes,
vehicles, recreational vehicles, equipment and all proximate
areas where:

(1) the manufacture of a controlled substance

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underscored material = new
[bracketed material] = delete

1 is taking place or has taken place or an attempt is being made
2 or has been made to manufacture a controlled substance; or

3 (2) chemicals used in the manufacture of a
4 controlled substance or waste materials produced in the
5 manufacture of a controlled substance are located or have been
6 located;

7 B. "controlled substance" means a drug or substance
8 listed in Schedules I through V of the Controlled Substances
9 Act or in rules promulgated pursuant to that act;

10 C. "law enforcement agency" means a police or
11 public safety department administered by the state or a
12 political subdivision, or a person contracting for or on behalf
13 of a police or public safety department, where the employees
14 are responsible for the prevention and detection of crime and
15 the enforcement of the penal, traffic or highway laws of this
16 state;

17 D. "manufacture" means the production, preparation,
18 compounding, conversion or processing of a controlled substance
19 analog by extraction from substances of natural origin or
20 independently by means of chemical synthesis, but does not
21 include the preparation or compounding of a controlled
22 substance by:

23 (1) a practitioner, licensed or certified to
24 prescribe and administer drugs that are subject to the
25 Controlled Substances Act or the rules promulgated pursuant to

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1 that act, as an incident to the practitioner's administration
2 or dispensing of a controlled substance in the course of the
3 practitioner's professional practice; or

4 (2) a practitioner or the practitioner's agent
5 acting under the practitioner's supervision, or a scientific
6 investigator registered to conduct research with controlled
7 substances in the course of the scientific investigator's
8 professional practice or the scientific investigator's agent
9 acting under the scientific investigator's supervision, for or
10 as an incident to research, teaching or chemical analysis but
11 not for sale;

12 E. "mobile home" means a single-family dwelling
13 built on a permanent chassis designed for a long-term
14 residential occupancy and containing complete electrical,
15 plumbing and sanitary facilities designed to be installed in a
16 permanent or semi-permanent manner with or without a permanent
17 foundation and that is capable of being towed over public
18 highways as a unit or in sections by a special permit;

19 F. "recreational vehicle" means a vehicle with a
20 camping body that has its own motive power or is affixed to or
21 is towed by another vehicle and includes motor homes, travel
22 trailers and truck campers;

23 G. "remediation" means the cleanup, removal or
24 destruction of chemicals or contaminants at a clandestine drug
25 laboratory to conform with applicable department of environment

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1 rules and any action, including the destruction of property,
2 necessary to investigate, prevent, minimize or mitigate damages
3 to the public health or to the environment that may result from
4 the chemicals or contaminants; and

5 H. "vehicle" means a device in, upon or by which a
6 person or property may be transported or towed upon a street or
7 highway, propelled by a power other than human power, including
8 diesel fuel, gasoline, compressed natural gas, electricity or a
9 combination of these, designed to travel along the ground by
10 use of wheels, treads, runners or slides, and includes
11 automobiles, trucks, trailers of any kind, motorcycles, off-
12 highway motor vehicles, tractors, buggies or wagons.

13 Section 3. CLANDESTINE DRUG LABORATORY--PROCEDURES UPON
14 DISCOVERY.--Upon identification of a clandestine drug
15 laboratory by a law enforcement agency, the agency shall at the
16 time of identification:

17 A. pursuant to law, seize and secure the
18 clandestine drug laboratory from improper entry and order the
19 removal of persons from the laboratory;

20 B. notify the department of public safety of the
21 existence of the clandestine drug laboratory;

22 C. notify the department of environment of the
23 existence of the clandestine drug laboratory; and

24 D. post a notice of contamination in a conspicuous
25 place at the clandestine drug laboratory.

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1 Section 4. NOTICE OF CONTAMINATION TO OWNER, LANDLORD,
2 MANAGER OR OCCUPANT.--Upon identification of a clandestine drug
3 laboratory by a law enforcement agency, that agency shall:

4 A. if the owner, landlord, manager or occupant of
5 the clandestine drug laboratory and, if the clandestine drug
6 laboratory is a mobile home or recreational vehicle, the owner
7 or manager of a mobile home or recreational vehicle space-
8 rental or space-purchase park where the clandestine drug
9 laboratory may be located, is present at the time of seizure of
10 the clandestine drug laboratory, deliver a copy of a notice of
11 contamination to the owner, landlord, manager or occupant;

12 B. if the owner of the clandestine drug laboratory
13 and, if the clandestine drug laboratory is a mobile home or
14 recreational vehicle, the owner of a mobile home or
15 recreational vehicle space-rental or space-purchase park where
16 the clandestine drug laboratory may be located, is not
17 personally provided a copy of the notice of contamination
18 pursuant to Subsection A of this section, then within seven
19 business days after seizure of the clandestine drug laboratory,
20 send a notice of contamination by certified mail, return
21 receipt requested, to the owner at the owner's last known
22 address contained in records of the county or municipality
23 where the clandestine drug laboratory is located and proof of
24 mailing shall be considered notice to the owner;

25 C. if the owner of the clandestine drug laboratory

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1 cannot be identified, acquire proof of posting a notice of
2 contamination pursuant to Subsection D of Section 3 of the
3 Clandestine Drug Laboratory Act, which proof of posting shall
4 be considered notice to the owner; and

5 D. within seven business days after seizure of the
6 clandestine drug laboratory, deliver a copy of a notice of
7 contamination to the department of environment.

8 Section 5. NOTICE OF CONTAMINATION.--The notice of
9 contamination required by Sections 3 and 4 of the Clandestine
10 Drug Laboratory Act shall contain:

11 A. the word "WARNING" in large bold type at the top
12 and bottom of the notice;

13 B. a statement that a clandestine drug laboratory
14 was seized;

15 C. the date of the seizure;

16 D. the address or location of the clandestine drug
17 laboratory, including the identification of structures or
18 vehicles and, if known, a structure, room or apartment number
19 or a vehicle registration or vehicle identification number;

20 E. the name of the law enforcement agency that
21 seized the clandestine drug laboratory and that agency's
22 telephone number;

23 F. a statement that hazardous substances, toxic
24 chemicals or other residual contamination from operation of the
25 clandestine drug laboratory may still be present;

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1 G. a statement that it is a misdemeanor for a
2 person other than the owner, the owner's agent, a lessee or
3 renter or a transferee or assignee of the owner to enter,
4 occupy or use the clandestine drug laboratory or otherwise
5 knowingly and intentionally violate the provisions of the
6 notice of contamination until remediation of the clandestine
7 drug laboratory has taken place in accordance with department
8 of environment rules;

9 H. a statement that it is a misdemeanor to
10 knowingly and intentionally disturb the notice of contamination
11 posted at the clandestine drug laboratory;

12 I. a statement that the owner of the property shall
13 remediate the contaminated portion of the clandestine drug
14 laboratory in compliance with department of environment rules;

15 J. a statement that failure of the owner to
16 remediate the contaminated portion of the clandestine drug
17 laboratory in compliance with department of environment rules
18 may result in a fine of up to five thousand dollars (\$5,000);

19 K. contact information for the department of
20 environment; and

21 L. a statement that until remediation is complete,
22 selling, leasing, renting, loaning, assigning, exchanging or
23 otherwise transferring the clandestine drug laboratory without
24 providing notice of its existence as required by Section 11 of
25 the Clandestine Drug Laboratory Act shall void the sale, lease,

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1 rental, loan, assignment, exchange or other transfer and may
2 result in a fine of up to one thousand dollars (\$1,000).

3 Section 6. DEPARTMENT OF ENVIRONMENT--CLANDESTINE DRUG
4 LABORATORY LIST--RULES.--The department of environment shall:

5 A. maintain a list of clandestine drug laboratories
6 on the department's web site based on information received from
7 law enforcement agencies; and

8 B. promulgate rules for assessment and remediation
9 of residual contamination from chemicals or contaminants
10 resulting from a clandestine drug laboratory.

11 Section 7. OWNER RESPONSIBLE FOR REMEDIATION--NOTICE
12 VACATED.--

13 A. The owner of a clandestine drug laboratory is
14 responsible for its remediation in compliance with department
15 of environment rules.

16 B. Upon determination of the department of
17 environment that a clandestine drug laboratory has been
18 remediated in accordance with its rules, or that no remediation
19 is required, the department shall:

20 (1) remove the clandestine drug laboratory
21 from its web site list of clandestine drug laboratories; and

22 (2) notify the law enforcement agency that
23 seized the clandestine drug laboratory to remove the notice of
24 contamination from the former clandestine drug laboratory,
25 which the law enforcement agency shall do within three business

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1 days of being notified by the department of environment.

2 Section 8. REMEDIATION BY COUNTY OR MUNICIPALITY--LOAN.--

3 A. If the owner of a clandestine drug laboratory
4 refuses or fails to engage in remediation of the clandestine
5 drug laboratory as established by the rules of the department
6 of environment for remediation, or the owner or lien-holder of
7 a clandestine drug laboratory that is a mobile home or a
8 recreational vehicle has failed to remove the mobile home or
9 recreational vehicle pursuant to Section 10 of the Clandestine
10 Drug Laboratory Act, the county or municipality where the
11 clandestine drug laboratory is located shall remediate or seek
12 a court order requiring the owner to remediate the clandestine
13 drug laboratory as required by Section 7 of the Clandestine
14 Drug Laboratory Act. If the county or municipality is unable
15 to locate the owner within thirty days after the issuance of
16 the notice of contamination, the county or municipality shall
17 proceed with remediation.

18 B. If the county or municipality in which the
19 clandestine drug laboratory is located remediates pursuant to
20 Subsection A of this section, the owner of the clandestine drug
21 laboratory shall pay to the county or municipality all costs
22 related to such remediation. If the owner refuses or fails to
23 pay the county or municipality for its costs of remediation,
24 the county or municipality shall be entitled to file a lien
25 against the clandestine drug laboratory for the costs related

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1 to remediation and bring legal action against the owner for
2 those remediation costs.

3 C. Not including a vehicle other than a mobile home
4 or a recreational vehicle, if the county or municipality in
5 which the clandestine drug laboratory is located remediates
6 pursuant to Subsection A of this section, the county or
7 municipality may apply for a loan from the New Mexico finance
8 authority, pursuant to the requirements and procedures of the
9 authority, to cover the costs of remediation.

10 Section 9. RESTITUTION.--

11 A. A court may require a person convicted of a
12 crime involving a clandestine drug laboratory to pay
13 restitution to a public entity that took any action under the
14 Clandestine Drug Laboratory Act. The restitution ordered may
15 cover the reasonable costs of the actions taken.

16 B. In addition to the restitution authorized in
17 Subsection A of this section, a court may require a person
18 convicted of a crime involving a clandestine drug laboratory to
19 pay restitution to the owner of a clandestine drug laboratory
20 who incurred remediation and other costs because of the crime.

21 Section 10. MOBILE HOME OR RECREATIONAL VEHICLE.--If a
22 clandestine drug laboratory is a mobile home or a recreational
23 vehicle in a space-rental or space-purchase park, and has not
24 been remediated pursuant to Section 7 of the Clandestine Drug
25 Laboratory Act, the park owner shall request the owner or lien-

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1 holder of the mobile home or recreational vehicle to remove it
2 from the park within thirty days, unless the mobile home or
3 recreational vehicle belongs to the park owner. If the mobile
4 home or recreational vehicle is not removed within thirty days,
5 the county or municipality where the mobile home or
6 recreational vehicle is located shall proceed pursuant to
7 Section 8 of the Clandestine Drug Laboratory Act.

8 Section 11. NOTICE BY OWNER TO TRANSFEREE.--

9 A. Until remediation is completed, an owner shall
10 not sell, lease, rent, loan, assign, exchange or otherwise
11 transfer the clandestine drug laboratory unless the owner:

12 (1) provides written notice to the purchaser,
13 lessee, renter, borrower, assignee, exchange partner or other
14 transferee, with a copy to the department of environment, of
15 the existence of the clandestine drug laboratory; and

16 (2) receives a written acknowledgment, and
17 provides a copy to the department of environment, that the
18 notice was received by the purchaser, lessee, renter, borrower,
19 assignee, exchange partner or other transferee.

20 B. A formal or informal purchase and sale, lease,
21 rental, loan, assignment, exchange or transfer agreement or
22 contract shall be void if notice is not provided pursuant to
23 this section and the owner shall be liable for any harm
24 resulting from the owner's failure to comply with the
25 requirements of this section.

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1 Section 12. CIVIL PENALTIES.--

2 A. Whenever on the basis of any information the
3 secretary of environment determines that an owner has failed to
4 comply with the provisions of:

5 (1) Section 7 of the Clandestine Drug
6 Laboratory Act regarding remediation in compliance with
7 department of environment rules, the secretary of environment
8 may issue an order imposing on the owner a civil penalty in an
9 amount not to exceed five thousand dollars (\$5,000), which
10 amount may be deposited in the state treasury and credited to
11 the hazardous waste emergency fund; or

12 (2) Section 11 of the Clandestine Drug
13 Laboratory Act regarding notice to a purchaser, lessee, renter,
14 borrower, assignee, exchange partner or other transferee, the
15 secretary of environment may issue an order imposing on the
16 owner a civil penalty in an amount not to exceed one thousand
17 dollars (\$1,000), which amount shall be deposited in the state
18 treasury and credited to the hazardous waste emergency fund.

19 B. An order issued pursuant to Subsection A of this
20 section shall become final unless, no later than thirty days
21 after the order is served, the owner named in the order submits
22 a written request to the secretary of environment for a public
23 hearing. Upon that request, the secretary of environment shall
24 promptly conduct a public hearing. The secretary of
25 environment shall appoint an independent hearing officer to

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1 preside over the public hearing. The hearing officer shall
2 make and preserve a complete record of the proceedings and
3 forward recommendations based on the record to the secretary of
4 environment, who shall make the final decision. In connection
5 with a hearing pursuant to this section, the secretary of
6 environment may issue subpoenas for the attendance and
7 testimony of witnesses and the production of relevant papers,
8 books and documents and may promulgate rules for discovery
9 procedures. A final decision of the secretary of environment
10 pursuant to this section may be appealed to the district court
11 pursuant to Section 39-3-1.1 NMSA 1978.

12 Section 13. CRIMINAL PENALTIES.--

13 A. A person who knowingly and intentionally
14 violates a notice of contamination issued by a law enforcement
15 agency pursuant to the Clandestine Drug Laboratory Act is
16 guilty of a misdemeanor and shall be sentenced in accordance
17 with the provisions of Section 31-19-1 NMSA 1978.

18 B. A person who knowingly and intentionally
19 disturbs a notice of contamination posted on a clandestine drug
20 laboratory is guilty of a misdemeanor and shall be sentenced in
21 accordance with the provisions of Section 31-19-1 NMSA 1978.

22 Section 14. PREEMPTION.--After the effective date of the
23 promulgation of enforceable rules by the department of
24 environment pursuant to the Clandestine Drug Laboratory Act, no
25 county or municipality, including a home-rule municipality that

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1 has adopted a charter pursuant to Article 10, Section 6 of the
2 constitution of New Mexico, shall adopt or enforce an ordinance
3 or resolution regarding the subject matter of the Clandestine
4 Drug Laboratory Act.

5 Section 15. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2007.

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